

Notice of Allowability

Application No.

10/050,928

Examiner

Nathan M. Nutter

Applicant(s)

KAWAI ET AL.

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 27 December 2005.
2. ☒ The allowed claim(s) is/are 1-9 and 11-15.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Harris Pitlick on 10 March 2006.

The application has been amended as follows:

In the claims:

Cancel claim 16.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: no prior art has been found that either teaches or fairly suggests the production of an ethylene-vinyl alcohol copolymer resin composition by the method recited of (a) introducing into an extruder an ethylene-vinyl alcohol copolymer having a water content in a range 0.5-70 wt%, based on the total weight of water and copolymer, with subsequent melting of the ethylene-vinyl alcohol copolymer; (b) introducing into the extruder a liquid component

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comprising an aqueous solution of a resin, an aqueous dispersion of a resin, an aqueous dispersion of inorganic fine particles having an average diameter of not more than 10 μm , or a mixture thereof; (c) subjecting said melted ethylene-vinyl alcohol copolymer and said component to melt-kneading in said extruder; and (d) discharging the resulting ethylene-vinyl alcohol copolymer resin composition from the extruder. The timely-filed Terminal Disclaimer is sufficient to remove the rejection of the claims over the reference to Kawai et al (US 6,743,891). The reference to Mayer et al (US 5,322,866) is deemed insufficient to present a bar or suggestion thereof to the instant claims. Mayer et al require the mixing of all constituents prior to the melting and kneading which is not contemplated herein where the ethylene vinyl alcohol polymer is melted first. The reference shows all constituents added together prior to melting/extrusion. Mayer et al do not teach nor suggest the addition of an aqueous solution or aqueous dispersion to the melted composition of ethylene vinyl alcohol with subsequent mixing and extrusion. As such, Mayer et al do not recognize any benefit from the order of addition of their components. Finally, it is pointed out that Mayer et al add all constituents together to produce a wetted powder mixture prior to melting. The reference does not teach or suggest the addition of a solution or dispersion of a polymer or copolymer, as herein recited, or any particular amount of water as required for the aqueous resin additives. As such, the reference is not deemed to present a bar to the patentability of the instant claims. The references to Makio et al and Kenji et al are not deemed to cure the deficiencies of Mayer et al. since there are no outstanding issues

with regard to the clarity or enablement of the claims, these claims are deemed to contain allowable subject matter.

The timely filed Terminal Disclaimer of 12 January 2006 is deemed to overcome the rejection of the claims under the judicially created doctrine of obviousness-type double patenting over the reference to Kawai et al (US 6,743,891).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Nathan M. Nutter", is written over the printed name and title.

Nathan M. Nutter
Primary Examiner
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nmn

10 March 2006